

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. M MC 61092 through M MC 61096.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of the calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does

not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers, and absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

APPEARANCES: Jay R. McKenzie, Esq., Preston, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Arden F. Griffith, Anciel A. Griffith, Stephen Griffith, and Daren H. Griffith from the Montana State Office, Bureau of Land Management (BLM), decision dated August 24, 1982, which declared the unpatented Gold Nugget Nos. 1 through 5 placer mining claims, M MC 61092 through M MC 61096, abandoned and void because no proof of labor or notice of intention to hold the claims for the assessment year ending September 1, 1981, was filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The claims were located June 1, 1980, and were recorded with BLM July 10, 1980.

Appellants state that the required proof of labor for the claims was recorded in Beaverhead County, Montana, September 28, 1981, and thereafter a copy of the recorded proof of labor was sent to BLM on or about October 30, 1981. Appellants argue that their good faith efforts deserve some consideration and that they would have acted to protect their interests if they had been informed of the deficiency in filing.

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each assessment year be filed in the proper office of BLM within the specified time limits, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed for recordation with BLM.

Despite appellants' statement that the document was properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). Thus, even if the document had been mailed and an error by the Postal Service prevented it from reaching the BLM office, that fact would not excuse appellants' failure to comply with

the cited regulations. Edna L. Patterson, 64 IBLA 316 (1982); Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James F. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Magdalene Pickering Franklin, 57 IBLA 244 (1981); Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

This Board has no authority to excuse lack of compliance with the statutes or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] As the Board stated in Lynn Keith, *supra*:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent. * * * At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am Jur. 2d, Abandoned Property, §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original].

53 IBLA at 196-97; 88 I.D. at 371-72.

[3] A legal presumption of regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Kephart v. Richardson, 505 F.2d 1085, 1090 (3rd Cir. 1974); Lawrence E. Dye, 57 IBLA 360 (1981).

Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943).

We find the assertions of appellants do not constitute a sufficient predicate for holding that the proofs of labor were properly submitted to BLM and that BLM then lost or misplaced them.

The Department has consistently held that one who entrusts to the Postal Service instruments for delivery to a BLM office is employing the Postal Service as his agent, and consequently must suffer the penalty for late delivery or loss of the mailed items. See Regina McMahon, 56 IBLA 372 (1981); Don Chris A. Coyne, 52 IBLA 1 (1981); Mobil Oil Co., 35 IBLA 265 (1978); Vern H. Bolinder, 30 IBLA 26 (1977); A. E. White, 28 IBLA 91 (1976).

Appellants may wish to confer with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

